

Paul R. Niehaus, Esq. (PN-3994)
 NIEHAUS LLP
 220 East 54th Street, 3K
 New York, New York 10022
 (917) 882-7178

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK**

	x	
ADVANCE MAGAZINE PUBLISHERS INC.	:	Civil Action No.:
d/b/a THE CONDÉ NAST PUBLICATIONS,	:	1:05-cv-07516 (KMK)(DFE)
	:	
Plaintiff,	:	ELECTRONICALLY FILED
	:	
v.	:	NOTICE OF MOTION TO
	:	DISMISS OR STAY
ACTIV8NOW, LLC AND ACTIVE8MEDIA, LLC	:	
	:	
Defendants.	:	
		x

NOTICE OF MOTION TO DISMISS AND/OR STAY

PLEASE TAKE NOTICE that, on a date and at a time designated by the Court, Defendants Activ8now, LLC (Activ8now") and Active8media, LLC ("Active8media"), by and through their undersigned counsel and pursuant to 12(b) of the Federal Rules of Civil Procedure, will move to dismiss, in its entirety, the Complaint filed by the Plaintiff in this action, Advance Magazine Publishers, Inc. d/b/a Condé Nast ("Condé Nast"). In the alternative, Defendants will request that this Court stay these proceedings until resolution of the concurrently pending lawsuit in the United States District Court for the Northern District of Georgia styled Activ8now, LLC, Active8media, LLC v. Advance Publications, Inc., Advance Magazine Publishers Inc. d/b/a Condé Nast Publications, RichFX, Inc., John Does 1-4, ABC Company and XYZ Company, N.D. GA. Case No. 1:05-cv-1529 (the "Georgia action").

In support of their Motion, as set forth more fully in the accompanying Memorandum of Law filed contemporaneously with this Motion, Activ8now and Active8media show that Plaintiff's Complaint should be dismissed because this Court lacks personal jurisdiction over Defendant Activ8now, the Complaint fails to state a claim upon which relief can be granted as to the requests for declaratory judgment, and pursuant to Fed.R.Civ.P. 12(b)(1) because there is lack of subject matter jurisdiction for the remaining claims.

PLEASE TAKE FURTHER NOTICE that, opposing papers, if any, shall be served on Defendants' counsel on or before October 3, 2005, and any reply papers shall be served on Plaintiff's counsel on or before October 10, 2005.

This 19th day of September, 2005.

Respectfully submitted,

NIEHAUS LLP

Paul R. Niehaus

220 East 54th Street, 3K
New York, New York 10022
Tel.: (917) 882-7178

Of Counsel
Dale Lischer
T. Hunter Jefferson
Deborah A. Heineman
SMITH, GAMBRELL & RUSSELL, LLP
Promenade II, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309-3592
Tel.: (404) 815-3500

TO:

Randy Lipsitz, Esq. (RL-1526)
Richard L. Moss, Esq. (RLM-7948)
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036
Tel.: (212)715-9100
Fax: (212)715-8000
*Attorneys for Plaintiff Advance Magazine Publishers Inc.
d/b/a The Condé Nast Publications*

Jerry S. Birenz, Esq.
Michael J. Anderson, Esq.
SAWN, BERMANT & GOULD LLP
4 Times Square, 23rd Floor
New York, New York 10036-6526
Tel.: (212) 381-7000
Of Counsel to Plaintiff